WP(C) 180/2001
BEFORE
THE HON'BLE MR. JUSTICE A. H. SAIKIA
(1) Heard Mr. C. Baruah, learned Sr. Counsel assisted by Mr. L. Sera, learned counsel appearing on behalf of the Petitioner and also heard Mr. P. K. Barman, l earned Govt. Counsel. ,a. P.

(2) The short point involved in this writ petition relates to non-publication of result of an interview by way of select list by the department of Economics a nd Statistics on the plea that the relevant existing Rules for recruitment to th e post in question is required to be amended and after such amendment only, the matter of selection would be referred to the Arunachal Pradesh Public Service co mmission (for short \the Commission\ ).

(3) The grievance of the writ petitioner is that in pursuance of an advertisem ent dated 16. 11. 99 issued by the Secretary (Economics and Statistics), Govt. o f Arunachal Pradesh inviting applications for filling up of one post of Referenc e Officer (Group 'b' non-gazetted) the Petitioner having possessed requisite qua lification and satisfied all the requirement mentioned in the advertisement, alo ng with others, applied for the post. Thereafter, the Petitioner along with one other called for interview by the call letter dated 7. 6. 2000 issued by the Dir ectorate of economics and Statistics, Govt. of Arunachal pradesh. Accordingly, s he appeared in the interview along with another candidate on 27. 2. 2000. It is stated that the Petitioner was the sole local tribal candidate. Having performed satisfactorily in the interview, the petitioner has been waiting for the result /select list to be published. But the authority did not take any steps for such publication of the result of the said interview.

(4) Since no select list has been published till date, the Petitioner has appr oached this court for a Mandamus to issue direction to the authority to publish the result of the interview for the post of Reference Officer held on 27. 6. 200 0.

(5) Be it noted that at the time of issuance of notice, this Court by order da ted 1. 12. 2000 passed an interim order to the extent that fresh advertisement i nviting the application for the post of Reference Officer (Grade 'b' non gazette d) Department of Economics and Statistics, Govt. of Arunachal Pradesh shall not be issued.

(6) The State-Respondents have contested the writ petition by filing the retur n, In the return at paragraph 4 the Govt. has taken the stand that the Governmen t's action in issuing the advertisement through the Department itself was very m uch erroneous in view of the Government existing notification dated 25. 6. 97 wh ich requires that Group B posts under Arunachal pradesh Government which have an element of direct recruitment come only under the purview of the Commission and accordingly, it was realised that Government's action in issuing advertisement departmentally without referring the matter to Commission was erroneous. For thi s purpose Government decides at the first instance to amend the existing Recruit ment Rules of 1978 and thereafter shall take steps for making the recruitment th rough Commission in the light of Government circular dated 25. 6. 97.

(7) During the course of hearing the learned govt. Counsel has produced before this Court a communication dated 1. 12. 2000 written by secretary to the Commis sion to the Secretary (Economics and Statistics), Govt. of Arunachal pradesh, It anagar in which the Department was requested to amend the Recruitment Rules suit ably and then submit fresh requisition through concerned Secretary for taking fu rther necessary action from the Commission on the ground that the post of Refere nce Officer being a Group 'b' though non-gazetted, comes under the purview of th e Commission as it has the element of direct recruitment and the existing Recrui tment Rules of 1978 is too old to be implemented.

(8) Mr. Baruah, learned Sr. Counsel appearing on behalf of the Petitioner subm its that the selection of Reference Group 'b' non-gazetted is governed by the Re cruitment Rules namely \recruitment Rules\ for the post of reference Officer (fo r library) in the department of Economics and Statistics), Govt. of A. P. The sa id Rule under column 13 provides as \does not arise\ under the Head

\the circumstance in which the UPSC is to be consulted in making recruitment\ an d as such, so long the Rule is not amended, the same shall prevail for the recru itment to the post in question. It is stated that though the govt. in their affi davit has taken stand that rule is going to be amended but stark reality is that the State-Respondents are yet to take any decision for such proposed amendment which has caused great prejudice to the petitioner. The entire action on the par t of the state Respondents is aimed it to deprive the petitioner of her legitima te claim for consideration for selection. \

(9) According to Mr. Baruah, the learned sr. Counsel, the Petitioner who is el igible and otherwise qualified in accordance with the recruitment Rules acquires a vested right for selection in accordance with the same Rules as existing at t he time of advertisement. Therefore, the Petitioner cannot be deprived of her su ch right on the plea that existing Rules is going to be amended in near future.

(10) In support of his argument Mr. Baruah, learned Sr. Counsel has taken me t o a decision of Dr. P. K. Jaiswal-Vs- Ms. Devi Mukherjee and Ors. , reported in 1992 (2) SCC 148. In that case, a question came up before the Apex court whether the Commission could go ahead of the selection process when the Govt. made prio r intimation to the Commission not to proceed with the selection because Govt. w as examining to fill up post by way of promotion by amending the Rules retrospec tively. In order to fill up a vacancy of Asstt. Director General by way of direc t recruit as per existing Recruitment Rules, the department of Ministry of Healt h and Family welfare, Govt. of India sent a requisition to the UPSC to advertise the post but before the commission could advertise the post, the govt. informed the Commission not to proceed with the process of selection because the Govt. e xamining to fill up the post by way of promotion for which the Govt. could amend the Rules retrospectively. Inspite of the receipt of the Government's communica tion the Commission went ahead of the selection process. The Apex Court held suc h an exercise on the part of the Commission would be an exercise of futility and somewhat hesty and unjustified. In arriving at a decision, the apex Court relyi ng on two decisions of its court in N. T. Devin Katti -Vs- Karnataka public Serv ice Commission, reported in (1990) 3 SCC 157 and Jatindra Kumar -Vs- State of Pu njab, reported in (1985) 1 SCC 122, held that once Commission issues an advertis ement at the behest of the Government and pursuant thereto calls a candidate for inte view, the candidate has a right to be considered for selection but does no t acquire any vested right to be selected or to be appointed to the post in ques tion but the right to selection crystalises only after the candidate is called f or interview pursuant to the advertisement.

(11) In the instant case, advertisement for the post in question was issued by the department in terms of existing rules and pursuantrto such advertisement in terview was taken wherein the Petitioner along with another took the interview. While the Petitioner has been waiting for result of the said interview to be pub lished through the select list, the government has come up with the plea that th ey are desiring to amend the Recruitment rules by which the matter for recruitme nt for the post in question shall be the commission being the competent authorit y to make selection following the procedure.

(12) I have found enough force in the submission made on behalf of the Petitio ner. Applying the ratio so laid down in, Jaiswal's case (supra), I fully agree t o hold that the same is applicable in the present case in hand. I am of the view that since the Department on being authorised by the existing Rules, issued the

advertisement and the interview was also held pursuant to the said advertisement, the authority is bound to publish the result of the said interview and the Petitioner including other candidates have the right to be considered for selection in terms of the Recruitment Rules which is still in vogue.

(13) Considering the facts and circumstances of the case and also upon hearing the learned counsel for the parties and on peaisal of the materials available on record, i am of the considered opinion that the writ petition deserves to be accepted. Accordingly, the same is allowed.

(14) Consequently, it is directed that the state-Respondents shall take immediate steps to publish the result of the interview held on 27. 6. 2000 for the post in question within a period of two months from the date of receipt of this order.

(15) The Petitioner shall furnish a certified copy of this order along with the copy of the writ petition with the annexures appended thereto to the competent authority who shall do the needful as per the direction indicated above. In the result, the writ petition is allowed. However, I pass no order as to costs.